

108TH CONGRESS  
2D SESSION

# H. R. 4475

To amend the Endangered Species Act of 1973 to focus conservation efforts under that Act on the 109 species most in danger of extinction, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 1, 2004

Mr. GRAVES introduced the following bill; which was referred to the  
Committee on Resources

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## A BILL

To amend the Endangered Species Act of 1973 to focus conservation efforts under that Act on the 109 species most in danger of extinction, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Endangered Species  
5       Recovery Act of 2004”.

1 **TITLE I—AMENDMENTS TO EN-**  
2 **DANGERED SPECIES ACT OF**  
3 **1973**

4 **SEC. 101. DEFINITION OF ENDANGERED SPECIES.**

5 Section 3(6) of the Endangered Species Act of 1973  
6 (16 U.S.C. 1532(6)) is amended by striking “all or a sig-  
7 nificant portion of its range” and inserting “all of its glob-  
8 al range”.

9 **SEC. 102. LISTING OF 109 ENDANGERED SPECIES MOST IN**  
10 **DANGER OF EXTINCTION.**

11 (a) DETERMINATION OF SPECIES MOST IN DANGER  
12 OF EXTINCTION.—Section 4(a) of the Endangered Species  
13 Act of 1973 (16 U.S.C. 1533(a)) is amended by adding  
14 at the end the following:

15 “(4) DETERMINATION OF SPECIES MOST IN  
16 DANGER OF EXTINCTION.—The Secretary shall de-  
17 termine, from among the species determined under  
18 this subsection to be endangered species or threat-  
19 ened species, the 109 species that are in the greatest  
20 danger of extinction throughout all or a significant  
21 portion of their range. The Secretary shall use the  
22 best scientific evidence available to determine those  
23 species.”.

1 (b) LIMITATIONS ON LISTING AND PROTECTION TO  
2 109 SPECIES.—Section 4 of the Endangered Species Act  
3 of 1973 (16 U.S.C. 1533) is amended—

4 (1) in subsection (a)(2)(A)(i), by inserting “in  
5 accordance with subsection (c)” after “be listed”;  
6 and

7 (2) in subsection (c)(1), by striking the first  
8 sentence and inserting “The Secretary of the Inte-  
9 rior shall publish in the Federal Register a list of  
10 the 109 species determined under subsection (a)(4)  
11 to be in the greatest danger of extinction throughout  
12 all or a significant portion of their range.”.

13 **SEC. 103. APPROVAL BY PANEL REQUIRED.**

14 Section 4(c)(1) of the Endangered Species Act of  
15 1973 (16 U.S.C. 1533(c)(1)) is further amended by in-  
16 serting after the first sentence the following: “The Sec-  
17 retary may not include a species in the list unless inclusion  
18 of the species is approved by the majority vote of a panel  
19 comprised of the Secretary of the Interior, the Secretary  
20 of Transportation, and the Secretary of Defense.”.

21 **SEC. 104. LIMITATION ON PERIOD OF LISTING.**

22 Section 4(c)(1) of the Endangered Species Act of  
23 1973 (16 U.S.C. 1533(c)(1)) is further amended by add-  
24 ing at the end the following: “No species may be included  
25 in the list for a period exceeding 5 years.”.

1 **SEC. 105. ELIMINATION OF RESTRICTION ON BASES FOR**  
2 **DETERMINATION OF ENDANGERED SPECIES**  
3 **AND THREATENED SPECIES.**

4 Section 4(b)(1)(A) of the Endangered Species Act of  
5 1973 (16 U.S.C. 1533(b)(1)(A)) is amended by striking  
6 “solely”.

7 **SEC. 106. NOTIFICATION OF PRIVATE LANDOWNERS RE-**  
8 **QUIRED.**

9 Section 4(c) of the Endangered Species Act of 1973  
10 (16 U.S.C. 1533(c)) is further amended by adding at the  
11 end the following:

12 “(4) NOTIFICATION OF PRIVATE LAND OWN-  
13 ERS.—If the Secretary determines that a species  
14 that is included or proposed to be included in the list  
15 under paragraph (1) occurs on privately owned land,  
16 the Secretary—

17 “(A) shall provide notice of that deter-  
18 mination to the owner of the land; and

19 “(B) in the case of a species proposed to  
20 be included in such list, may not add the spe-  
21 cies to such list before the owner receives the  
22 notice under clause (i).”.

23 **SEC. 107. LIMITING PROTECTIONS FOR LISTED SPECIES.**

24 Section 13 of the Endangered Species Act of 1973  
25 (consisting of amendments to other laws, which have exe-  
26 cuted) is amended to read as follows:

1 **“SEC. 13. LIMITATION ON PROTECTIONS FOR LISTED SPE-**  
2 **CIES.**

3 “(a) LIMITATION ON PROHIBITIONS.—The prohibi-  
4 tions under section 9 shall not apply with respect to any  
5 species other than a species in the list under section 4(c).

6 “(b) REVIEW OF HABITAT CONSERVATION PLANS.—  
7 The Secretary shall complete review of a habitat conserva-  
8 tion plan submitted for a permit under section  
9 10(a)(1)(B) by not later than 180 days after the date the  
10 plan is submitted to the Secretary.”.

11 **SEC. 108. EFFECTIVE DATE AND IMPLEMENTATION OF**  
12 **AMENDMENTS.**

13 (a) EFFECTIVE DATE OF AMENDMENTS.—Except as  
14 otherwise provided in this Act, the amendments made by  
15 this title shall take effect upon the expiration of the 2-  
16 year period beginning on the date of the enactment of this  
17 Act.

18 (b) IMPLEMENTATION OF AMENDMENTS.—The Sec-  
19 retary (as that term is defined in section 3 of the Endan-  
20 gered Species Act of 1973 (16 U.S.C. 1532)) shall—

21 (1) before the end of the 2-year period begin-  
22 ning on the date of the enactment of this Act, deter-  
23 mine pursuant to the amendment made by section  
24 102(a), from among the species that have been de-  
25 termined to be endangered species under section  
26 4(a) of the Endangered Species Act of 1973 (16

1 U.S.C. 1533(a)) as of the date of the determination  
2 under this paragraph, the 109 species that are in  
3 the greatest danger of extinction throughout all or  
4 a significant portion of their range; and

5 (2) upon the expiration of that period, publish  
6 a list of such species under section 4(c) (16 U.S.C.  
7 1533(c)) of such Act, as amended by this Act.

## 8 **TITLE II—SPECIES CONSERVA-** 9 **TION RESERVE PROGRAM**

### 10 **SEC. 201. SPECIES CONSERVATION RESERVE PROGRAM.**

11 (a) IN GENERAL.—Through the 2026 calendar year,  
12 the Secretary of the Interior (in this title referred to as  
13 the “Secretary”) shall formulate and carry out a species  
14 conservation reserve program under which land is enrolled  
15 through the use of contracts to assist owners and opera-  
16 tors of land specified in subsection (b) to conserve endan-  
17 gered species.

18 (b) ELIGIBLE LAND.—The Secretary may include in  
19 the program established under this title agricultural land  
20 that is occupied by a species that is determined under sec-  
21 tion 4 of the Endangered Species Act of 1973, by the Sec-  
22 retary (as that term is used in that Act), to be an endan-  
23 gered species.

1 (c) DURATION OF CONTRACT.—For the purpose of  
2 carrying out this title, the Secretary shall enter into con-  
3 tracts of not more than 5 years.

4 (d) ELIGIBILITY FOR CONSIDERATION.—On the expi-  
5 ration of a contract entered into under this title, the land  
6 subject to the contract shall be eligible to be considered  
7 for reenrollment in the species conservation reserve.

8 (e) BALANCE AMONG HABITATS.—In determining  
9 the acceptability of contract offers under this title, the  
10 Secretary shall ensure, to the maximum extent practicable,  
11 an adequate balance among wildlife habitats.

12 **SEC. 202. DUTIES OF OWNERS AND OPERATORS.**

13 (a) IN GENERAL.—Under the terms of a contract en-  
14 tered into under this title, during the term of the contract,  
15 an owner or operator of land shall agree—

16 (1) to implement a plan to conserve endangered  
17 species;

18 (2) on a violation of a term or condition of the  
19 contract at any time the owner or operator has con-  
20 trol of the land—

21 (A) to forfeit all rights to receive rental  
22 payments and cost sharing payments under the  
23 contract and to refund to the Secretary any  
24 rental payments and cost sharing payments re-  
25 ceived by the owner or operator under the con-

1           tract, together with interest on the payments as  
2           determined by the Secretary, if the Secretary  
3           determines that the violation is of such nature  
4           as to warrant termination of the contract; or

5                 (B) to refund to the Secretary, or accept  
6           adjustments to, the rental payments and cost  
7           sharing payments provided to the owner or op-  
8           erator, as the Secretary considers appropriate,  
9           if the Secretary determines that the violation  
10          does not warrant termination of the contract;  
11          and

12          (3) on the transfer of the right and interest of  
13          the owner or operator in land subject to the con-  
14          tract—

15                 (A) to forfeit all rights to rental payments  
16           and cost sharing payments under the contract;  
17           and

18                 (B) to refund to the United States all rent-  
19           al payments and cost sharing payments received  
20           by the owner or operator, or accept such pay-  
21           ment adjustments or make such refunds as the  
22           Secretary considers appropriate and consistent  
23           with the objectives of this title;

24          unless the transferee of the land agrees with the  
25          Secretary to assume all obligations of the contract,



1       except that no refund of rental payments and cost  
2       sharing payments shall be required if the land is  
3       purchased by or for the United States Fish and  
4       Wildlife Service, or the transferee and the Secretary  
5       agree to modifications to the contract, in a case in  
6       which the modifications are consistent with the ob-  
7       jectives of the program, as determined by the Sec-  
8       retary.

9       (b) CONSERVATION PLANS.—The plan referred to in  
10      subsection (a)(1) shall set forth—

11           (1) the conservation measures and practices to  
12      be carried out by the owner or operator during the  
13      term of the contract; and

14           (2) the commercial use, if any, to be permitted  
15      on the land during the term.

16      (c) FORECLOSURE.—

17           (1) IN GENERAL.—Notwithstanding any other  
18      provision of law, an owner or operator who is a  
19      party to a contract entered into under this title may  
20      not be required to make repayments to the Secretary  
21      of amounts received under the contract if the land  
22      that is subject to the contract has been foreclosed on  
23      and the Secretary determines that forgiving the re-  
24      payments is appropriate in order to provide fair and  
25      equitable treatment.

1 (2) RESUMPTION OF CONTROL.—

2 (A) IN GENERAL.—This subsection shall  
3 not void the responsibilities of an owner or op-  
4 erator under the contract if the owner or oper-  
5 ator resumes control over the land that is sub-  
6 ject to the contract within the period specified  
7 in the contract.

8 (B) CONTRACT.—On the resumption of the  
9 control over the land by the owner or operator,  
10 the provisions of the contract in effect on the  
11 date of the foreclosure shall apply.

12 **SEC. 203. DUTIES OF THE SECRETARY.**

13 In return for a contract entered into by an owner or  
14 operator under section 202, the Secretary shall—

15 (1) bear the cost of carrying out the conserva-  
16 tion measures and practices set forth in the con-  
17 tract; and

18 (2) for a period of years not in excess of the  
19 term of the contract, pay an annual rental payment  
20 in an amount necessary to compensate for the loss  
21 in agricultural value of property that is subject to  
22 the contract, as determined by a person authorized  
23 by a State or local government the value of real  
24 property.

1 **SEC. 204. PAYMENTS.**

2 (a) **TIMING.**—The Secretary shall provide payment  
3 for obligations incurred by the Secretary under a contract  
4 entered into under this title with respect to any annual  
5 rental payment obligation incurred by the Secretary—

6 (1) as soon as practicable after October 1 of  
7 each calendar year; or

8 (2) at the option of the Secretary, at any time  
9 prior to such date during the year that the obliga-  
10 tion is incurred.

11 (b) **ANNUAL RENTAL PAYMENTS.**—

12 (1) **IN GENERAL.**—In determining the amount  
13 of annual rental payments to be paid to owners and  
14 operators for converting highly erodible cropland  
15 normally devoted to the production of an agricul-  
16 tural commodity to less intensive use, the Secretary  
17 may consider, among other things, the amount nec-  
18 essary to encourage owners or operators of highly  
19 erodible cropland to participate in the program es-  
20 tablished by this title.

21 (2) **METHOD OF DETERMINATION.**—The  
22 amounts payable to owners or operators in the form  
23 of rental payments under contracts entered into  
24 under this title may be determined through—

1 (A) the submission of bids for such con-  
2 tracts by owners and operators in such manner  
3 as the Secretary may prescribe; or

4 (B) such other means as the Secretary de-  
5 termines are appropriate.

6 (c) CASH OR IN-KIND PAYMENTS.—

7 (1) IN GENERAL.—Except as otherwise pro-  
8 vided in this section, payments under this title—

9 (A) shall be made in cash in such amount  
10 and on such time schedule as is agreed on and  
11 specified in the contract; and

12 (B) may be made in advance of determina-  
13 tion of performance.

14 (2) CASH PAYMENTS.—Payments to an owner  
15 or operator under a special species conservation re-  
16 serve enhancement program described in subsection  
17 (e)(4) shall be in the form of cash only.

18 (d) PAYMENTS ON DEATH, DISABILITY, OR SUCCES-  
19 SION.—If an owner or operator that is entitled to a pay-  
20 ment under a contract entered into under this title dies,  
21 becomes incompetent, is otherwise unable to receive the  
22 payment, or is succeeded by another person that renders  
23 or completes the required performance, the Secretary shall  
24 make the payment, in accordance with regulations pre-  
25 scribed by the Secretary and without regard to any other

1 provision of law, in such manner as the Secretary deter-  
2 mines is fair and reasonable in light of all of the cir-  
3 cumstances.

4 (e) PAYMENT LIMITATION FOR RENTAL PAY-  
5 MENTS.—

6 (1) IN GENERAL.—The total amount of rental  
7 payments made to a person under this title for any  
8 fiscal year may not exceed \$50,000.

9 (2) REGULATIONS.—

10 (A) IN GENERAL.—The Secretary shall  
11 promulgate regulations—

12 (i) defining the term “person” as used  
13 in this subsection; and

14 (ii) providing such terms and condi-  
15 tions as the Secretary determines nec-  
16 essary to ensure a fair and reasonable ap-  
17 plication of the limitation established by  
18 this subsection.

19 (B) CORPORATIONS AND STOCK-  
20 HOLDERS.—The regulations promulgated by the  
21 Secretary on December 18, 1970, under section  
22 101 of the Agricultural Act of 1970 (7 U.S.C.  
23 1307), shall be used to determine whether cor-  
24 porations and their stockholders may be consid-  
25 ered as separate persons under this subsection.

1           (3) OTHER PAYMENTS.—Rental payments re-  
2       ceived by an owner or operator shall be in addition  
3       to, and not affect, the total amount of payments  
4       that the owner or operator is otherwise eligible to re-  
5       ceive under the Farm Security and Rural Invest-  
6       ment Act of 2002.

7           (4) SPECIAL SPECIES CONSERVATION RESERVE  
8       ENHANCEMENT PROGRAM.—

9           (A) IN GENERAL.—The provisions of this  
10       subsection that limit payments to any person,  
11       and section 1305(d) of the Agricultural Rec-  
12       onciliation Act of 1987 (7 U.S.C. 1308 note;  
13       Public Law 100–203), shall not be applicable to  
14       payments received by a State, political subdivi-  
15       sion, or agency thereof in connection with  
16       agreements entered into under a special species  
17       conservation reserve enhancement program car-  
18       ried out by that entity that has been approved  
19       by the Secretary.

20          (B) AGREEMENTS.—The Secretary may  
21       enter into such agreements for payments to  
22       States (including political subdivisions and  
23       agencies of States) that the Secretary deter-  
24       mines will advance the purposes of this title.

1       (f) OTHER STATE OR LOCAL ASSISTANCE.—In addi-  
2       tion to any payment under this title, an owner or operator  
3       may receive cost share assistance, rental payments, or tax  
4       benefits from a State or subdivision thereof for enrolling  
5       land in the species conservation reserve program.

6       **SEC. 205. CONTRACTS.**

7       (a) OWNERSHIP OR OPERATION REQUIREMENTS.—

8               (1) IN GENERAL.—Except as provided in para-  
9       graph (2), no contract shall be entered into under  
10       this title concerning land with respect to which the  
11       ownership has changed in the 1-year period pre-  
12       ceding the first year of the contract period unless—

13               (A) the new ownership was acquired by  
14       will or succession as a result of the death of the  
15       previous owner;

16               (B) the Secretary determines that the land  
17       was acquired under circumstances that give  
18       adequate assurance that the land was not ac-  
19       quired for the purpose of placing the land in  
20       the program established by this title; or

21               (C) the ownership change occurred due to  
22       foreclosure on the land and the owner of the  
23       land immediately before the foreclosure exer-  
24       cises a right of redemption from the mortgage  
25       holder in accordance with State law.

1 (2) EXCEPTIONS.—Paragraph (1) shall not—

2 (A) prohibit the continuation of an agree-  
3 ment by a new owner after an agreement has  
4 been entered into under this title; or

5 (B) require a person to own the land as a  
6 condition of eligibility for entering into the con-  
7 tract if the person—

8 (i) has operated the land to be covered  
9 by a contract under this section for at  
10 least 1 year preceding the date of the con-  
11 tract; and

12 (ii) controls the land for the contract  
13 period.

14 (b) SALES OR TRANSFERS.—If, during the term of  
15 a contract entered into under this title, an owner or oper-  
16 ator of land subject to the contract sells or otherwise  
17 transfers the ownership or right of occupancy of the land,  
18 the new owner or operator of the land may—

19 (1) continue the contract under the same terms  
20 or conditions; or

21 (2) enter into a new contract in accordance  
22 with this title.

23 (c) MODIFICATIONS.—The Secretary may modify a  
24 contract entered into with an owner or operator under this  
25 title if—



1           (1) the owner or operator agrees to the modi-  
2       fication; and

3           (2) the Secretary determines that the modifica-  
4       tion is desirable—

5                (A) to carry out this title;

6                (B) to facilitate the practical administra-  
7       tion of this title; or

8                (C) to achieve such other goals as the Sec-  
9       retary determines are appropriate, consistent  
10      with this title.

11      (d) TERMINATION.—

12           (1) IN GENERAL.—The Secretary may termi-  
13      nate a contract entered into with an owner or oper-  
14      ator under this title if—

15                (A) the owner or operator agrees to the  
16      termination; and

17                (B) the Secretary determines that the ter-  
18      mination would be in the public interest.

19           (2) NOTICE TO CONGRESSIONAL COMMIT-  
20      TEES.—At least 90 days before taking any action to  
21      terminate under paragraph (1) all species conserva-  
22      tion reserve contracts entered into under this title,  
23      the Secretary shall provide to the Congress written  
24      notice of the action.

1       (e) EARLY TERMINATION BY OWNER OR OPER-  
2   ATOR.—

3           (1) RENEWED ENROLLMENT.—The termination  
4       of a contract entered into under this title shall not  
5       affect the ability of the owner or operator that re-  
6       quested the termination to submit a subsequent bid  
7       to enroll the land that was subject to the contract  
8       into the species conservation reserve.

9           (2) CONSERVATION REQUIREMENTS.—If land  
10      that was subject to a contract is returned to produc-  
11      tion of an agricultural commodity, the conservation  
12      requirements under subtitles B and C of title XII of  
13      the Food Security Act of 1985 shall apply to the use  
14      of the land to the extent that the requirements are  
15      similar to those requirements imposed on other simi-  
16      lar land in the area, except that the requirements  
17      may not be more onerous than the requirements im-  
18      posed on other land.

○